

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

KEN DAVIS,

Plaintiff,

V.

POWERSTOP, LLC,

Defendant.

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Case: 1:23-cv-07631

Judge Sharon Johnson Coleman

Magistrate Judge Beth W. Jantz

Jury Trial Demanded

**PLAINTIFF’S OPPOSED MOTION FOR LEAVE
TO FILE FIRST AMENDED COMPLAINT**

NOW comes Ken Davis (“Plaintiff”), by and through the undersigned counsel and pursuant to Fed. R. Civ. P. 15(a)(2), respectfully bringing this Opposed Motion for Leave to File First Amended Complaint, and in support thereof, states as follows:

1. On September 7, 2023, Plaintiff filed his Complaint seeking redress for alleged violations of the Americans with Disabilities Act of 1990, as amended, 42 U.S.C §12101, *et seq.* (“ADA”), against Powerstop, LLC (“Defendant”). [Dkt. No. 1].

2. On November 13, 2023, Defendant filed a Motion to Dismiss two of the three claims in Plaintiff's complaint pursuant to Fed. R. Civ. Proc. 12(b)(6) [Dkt. No. 13], and their Memorandum in Support [Dkt. No. 13-1], alleging deficiencies within Plaintiff's Complaint.

3. Plaintiff requests leave to amend this Complaint to cure such alleged deficiencies, a copy of which is attached hereto as Exhibit A.

4. Pursuant to Fed. R. Civ. P. 15(a)(2), a court should freely give a party leave to amend its pleading when justice requires. *See* Fed. R. Civ. P. 15(a)(2).

5. “Rule 15(a) declares that leave to amend ‘shall be freely given when justice so requires’; this mandate is to be heeded. If the underlying facts or circumstances relied upon by a plaintiff may be a proper subject of relief, he ought to be afforded an opportunity to test his claim on the merits.” *Foman v. Davis*, 371 U.S. 178, 182 (1962).

6. A District Court may deny a motion to amend where there is “undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amended, etc.” *Id.*

7. Justice would be served if Plaintiff is granted leave to amend his Complaint.

8. Plaintiff’s Motion for Leave to Amend is not brought for purposes of causing undue delay, nor is it the result of bad faith or other dilatory motive. This is Plaintiff’s first request to amend their Complaint and Defendant will not suffer any prejudice as a result of the amendment.

9. Plaintiff provided a copy of their Motion and First Amended Complaint to Defendant, but has not received a response as to Defendant’s position as of the filing of this Motion.

WHEREFORE, Plaintiff respectfully requests this Honorable Court to enter an order granting Plaintiff leave to file his First Amended Complaint and to grant any other relief deemed just and proper.

Dated: December 27, 2023

Respectfully submitted,

/s/Chad W. Eisenback, Esq.

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Counsel for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on December 27, 2023, I electronically filed the foregoing with the Clerk of the Court for the United States District Court for the Northern District of Illinois, Eastern Division by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

/s/Chad W. Eisenback, Esq.
Chad W. Eisenback, Esq.